

ORIGINAL

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 -----x
4 GONZALO CORTES,

5 Plaintiff,

6 - against -

14-CV-3014
(SLT) (RML)

7 CITY OF NEW YORK; Sergeant JONCRIS
8 RZONCA, Shield No. 2960; Police
9 Officer MATTHEW SMITH, Shield No.
10 9407; Police Officer CHRISTOPHER
11 MUSA, Shield No. 9064; Police
12 Officer DOMINIC RUGGIERO, Shield No.
13 20894; Police Officer SHAUN RYAN,
14 Shield No. 10960; Police Officer
15 JOHN CESTARO, Shield No. 9553;
16 Police Officer ANDREW SCHULZ, Shield
17 No. 5758; Sergeant STEPHEN DALY,
18 Shield No. 944; Police Officer MARIO
19 CAPPUCCIA, Shield No. 19046; and
20 JOHN and JANE DOE 6 through 10,
21 individually and in their official
22 capacities (the names John and Jane
23 Doe being fictitious, as the true
24 names are presently unknown),
25

Defendants.

-----x
305 Broadway
New York, New York
June 1, 2016
12:01 p.m.

21 VIDEOTAPED EXAMINATION BEFORE TRIAL of
22 SGT. STEPHEN DALY, a Defendant in the
23 above-entitled action, held at the above
24 time and place, taken before Jessica R.
25 Taft, a Notary Public of the State of New
York, pursuant to Order and stipulations
between Counsel.

1 APPEARANCES:

2 HARVIS & FETT LLP

3 Attorneys for Plaintiff

305 Broadway, 7th Floor

4 New York, New York 10007

5 BY: GABRIEL HARVIS, ESQ.

-and-

6 BAREE N. FETT, ESQ.

7 ZACHARY W. CARTER, ESQ.

8 CORPORATION COUNSEL

9 NEW YORK CITY LAW DEPARTMENT

Attorney for Defendants

10 100 Church Street, Room 3-193

New York, New York 10007

11 BY: ELISSA JACOBS, ESQ.

12 ALSO PRESENT:

13 CHRIS HANLON, Videographer

14 * * *

1 S. Daly

2 A I am sure there would.

3 Q And how quickly upon learning of
4 the need for treatment should the desk
5 officer call an ambulance?

6 MS. JACOBS: Objection.

7 THE WITNESS: Should be immediate.

8 BY MR. HARVIS:

9 Q Do you think there is any
10 appropriate amount of time to wait before
11 obtaining medical treatment for an injured
12 prisoner?

13 MS. JACOBS: Objection.

14 THE WITNESS: It should be
15 immediate.

16 BY MR. HARVIS:

17 Q Can you think of a reason why a
18 desk sergeant would delay calling an
19 ambulance once the sergeant became aware
20 that someone inside the precinct needed
21 medical attention?

22 MS. JACOBS: Objection.

23 THE WITNESS: No, there should
24 be no reason.

25 BY MR. HARVIS:

1 S. Daly

2 would be where the desk would be, yes.

3 Q And through one of those doors
4 are those auxiliary cells that you discussed
5 earlier?

6 A Yes.

7 Q And is that door that leads to
8 the auxiliary cells also the door that
9 prisoners are led through if they need to
10 use the bathroom while in custody?

11 A Yes.

12 Q Seated at the desk, would the
13 desk officer at the 115th Precinct have line
14 of sight to the doorway that leads to those
15 cells?

16 A Directly to the front of the
17 doorway, yes.

18 Q And if the door is open in the
19 photograph, which I will mark as Plaintiff's
20 Exhibit 3, can the desk officer see down the
21 hallway from his normal seat at the desk?

22 A Yes, I believe so.

23 MR. HARVIS: Mark that as
24 Plaintiff's Exhibit 3, please.

25 (Thereupon, the photograph was

1 S. Daly
2 brought into the precinct?

3 A I don't recall him specifically.
4 I couldn't say if I was or I wasn't. I
5 mean, I don't recall what he looks like. I
6 don't know anything about him.

7 But I would, should have been at
8 that desk when anybody comes in, I would
9 assume. It is not good to assume, but --

10 Q Okay.

11 A -- I should have --

12 Q Yeah.

13 A -- been at the desk.

14 Q So, you said the document that
15 you reviewed prior to your testimony was the
16 command log, right?

17 A Yes.

18 Q And based on your review of the
19 command log, is it indicated, is there an
20 indication in the command log that you were
21 the person that was there when Gonzalo
22 Cortes was brought in?

23 A Yes.

24 Q And is that the fact that his
25 arrest stamp information is written in your

1 S. Daly

2 handwriting?

3 A Yes.

4 Q Based upon your practice in the
5 times that you have acted as the desk
6 sergeant in that command, would you
7 ordinarily make the entries for the
8 prisoners that are brought in front of the
9 desk when you are on the desk?

10 MS. JACOBS: Objection.

11 You can answer.

12 THE WITNESS: Yes.

13 BY MR. HARVIS:

14 Q But you do not have any specific
15 recollection of that particular prisoner
16 coming in front of you that night?

17 A No.

18 Q Based upon the information in the
19 command log that you wrote down, do you
20 believe that Mr. Cortes appeared to be
21 injured at the time that he was brought in
22 front of the desk?

23 A No.

24 Q And why do you say that?

25 A Because I wrote apparently

1 S. Daly

2 normal, I believe.

3 Q Would you like to have the
4 command log in front of you?

5 A Yes.

6 Q Okay, great. So what I would
7 like to do is enter as Exhibit 6 a copy of
8 the command log and then have you refer to
9 the actual document. Okay?

10 A Okay, that is fine.

11 (Thereupon, the document was
12 marked Plaintiff's Exhibit 6 for
13 identification, as of this date.)

14 THE WITNESS: Okay.

15 BY MR. HARVIS:

16 Q Okay. So, based on the entry
17 that you are looking at for Mr. Cortes, can
18 you say that he neither appeared injured nor
19 indicated that he was injured when he was in
20 front of you at the desk?

21 MS. JACOBS: And just to be
22 clear, we are looking at page 132 of
23 the command log. This was marked as
24 part of Plaintiff's Exhibit 6. This
25 is a multi-page document, but this is

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S. Daly

Confidential Defendant's 184.

MR. HARVIS: Thank you.

THE WITNESS: Repeat the question.

MR. HARVIS: Yes.

Can we just have that read back.

(Thereupon, the record was read
back by the reporter as recorded above.)

THE WITNESS: It would appear
that he was not injured.

BY MR. HARVIS:

Q And is it also fair to say, based
upon the entry that you are looking at, that
Mr. Cortes was not, in your opinion,
intoxicated to the point where he could not
care for himself?

A That is correct.

Q Did you determine the validity of
Mr. Cortes's arrest when he was in front of
you at the desk?

A Yes.

Q How do you know that?

A Because any time an officer comes
to me with an arrest, I will ask him what is
this arrest for.

1 S. Daly

2 THE WITNESS: Okay.

3 BY MR. HARVIS:

4 Q Okay. Does your handwriting
5 appear on this document?

6 A No.

7 Q Do you see where it says NYPD
8 supervisor slash desk officer?

9 A Yes.

10 Q Is that your signature?

11 A No.

12 Q Whose signature is it?

13 A I don't know. I don't sign my
14 name that way.

15 Q Take a look at the -- we can use
16 this. There is a copy that is already
17 marked. Take a look at the first page of
18 that. And you see the sixth entry down, it
19 says Sergeant Daly to Desk Sergeant Nomani
20 to admin?

21 A Yes.

22 Q Did you write that?

23 A Yes.

24 Q Take a look at that Sergeant Daly
25 next to the signature that's on the medical

1 S. Daly

2 treatment of prisoner form that we are
3 looking at.

4 A Some things are similar. But
5 only under where it says NYPD supervisor
6 desk officer --

7 Q Uh-huh.

8 A -- the signature spot is not my
9 signature.

10 Q Does it look like your first and
11 last name being written there?

12 A Yes.

13 Q By you?

14 A No.

15 Q How about the 115, is that your
16 handwriting?

17 A Not sure.

18 Q How about the 0600?

19 A Let me compare it to... I guess.
20 I am not sure.

21 MS. JACOBS: Don't guess.

22 BY MR. HARVIS:

23 Q I don't want you to guess.

24 A I'm not --

25 Q I want you to be sure. So if you

1 S. Daly

2 Q What makes you sure?

3 A Because it was signed in the
4 supervisor area of the box.

5 Q How do you know someone else
6 didn't sign that?

7 A I don't.

8 Q Okay. So you are not sure?

9 A Yes, not sure.

10 Q You have no idea, is that fair to
11 say, whose signature that is?

12 A That is correct.

13 Q Based upon your understanding of
14 how this form works, do you believe that a
15 supervisor was aware that Gonzalo Cortes had
16 a shoulder injury at six o'clock?

17 A Yes.

18 Q And assuming that the supervisor
19 was aware of a shoulder injury, what would
20 have been the appropriate action for that
21 supervisor to take at that time?

22 A To call an EMT.

23 Q Do you know who completed the
24 rest of the form?

25 A No.

1 S. Daly

2 none of that was written by you?

3 A No.

4 Q Okay. But, again, would you
5 agree it is the same name that is written
6 from one form to the other?

7 A It looks similar.

8 Q Okay. Any idea how or why a
9 second medical treatment of prisoner form
10 was prepared for this prisoner?

11 A It is possible. I mean, I am
12 looking -- the differences that I see right
13 now is that this one had an escort officer,
14 or had no escort officer, and this one had
15 an escort officer.

16 It is possible that whoever
17 prepared the first form, maybe when the
18 escort officer went down to the hospital,
19 maybe he forgot the form or just didn't have
20 one and just re-prepared one.

21 Q Okay. And so that would explain
22 why Sadiq is listed as the escort officer on
23 Exhibit 8, but Smith's name is crossed out
24 on Exhibit 7?

25 A Yes.

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2 along that police contact, the way I
3 interpret an old injury and a new injury was
4 an old injury was something where they are
5 coming in in a cast or something, or
6 something that's clearly old. But if they
7 scuffled with somebody that day and injured
8 themselves, that to me is new. Or if they
9 scuffled with police or anything in the
10 street, that is a new injury.

11 Now, if that happened in the
12 street and they are in the cells and now
13 let's just say four hours later they, they
14 have a complaint that, yeah, now it hurts,
15 you wouldn't notify IAB, because that
16 happened outside in the street during their
17 arrest. That is a normal thing to happen.

18 Q What if their complaint isn't
19 that this happened to me in the street; what
20 if their complaint is, Sarge, ten minutes
21 ago five officers used excessive force and
22 pushed me against bars and injured my
23 shoulder?

24 A That is a notification to IAB, a
25 duty captain and the 49.

1 S. Daly

2 Cortes?

3 A Yes.

4 Q How do you know that?

5 A The command log.

6 Q Do you know when?

7 A I do not know when.

8 MR. HARVIS: Mark this as
9 Plaintiff's Exhibit 9, please.

10 (Thereupon, the document was
11 marked Plaintiff's Exhibit 9 for
12 identification, as of this date.)

13 MR. HARVIS: And let's mark
14 this as 10 as well.

15 (Thereupon, the document was
16 marked Plaintiff's Exhibit 10 for
17 identification, as of this date.)

18 BY MR. HARVIS:

19 Q Does -- do you know what these
20 documents are that you are looking at, 9 and 10?

21 A Yes.

22 Q Nine is a Sprint report, right, and 10
23 is a prehospital care report from the FDNY?

24 A Yes.

25 Q And so, based on looking at these

1 S. Daly

2 documents together, can you piece together
3 when an ambulance was called for Gonzalo Cortes?

4 A 7:26.

5 Q Okay. Do you know who would have
6 made that call?

7 A The desk would make that call.
8 We have a radio there.

9 Q Okay, because when it says -- if
10 you look at the, I guess it is the fourth,
11 fifth line down, it says authority of 115
12 base, have EMS to the 115 Precinct, I think
13 S -- what does that say? Does that mean
14 quickly? SH --

15 MS. JACOBS: If you know.

16 THE WITNESS: Stationhouse.

17 MR. HARVIS: Stationhouse,
18 thank you, for a sick prisoner.

19 BY MR. HARVIS:

20 Q Is the, is the desk sergeant the
21 person who would call on the authority of
22 the 115 base?

23 A Yes.

24 Q Okay. Now, do you know why
25 someone, or two people perhaps, signed as

1 S. Daly

2 Q And you see at the top of the
3 same page you are looking at where it says
4 there is an injury line and it says right
5 dislocation?

6 A Yes.

7 Q So, based on your understanding
8 and protocol, if a prisoner is saying that
9 his dislocated shoulder was caused by police
10 officers taking him down when he went to the
11 bathroom, is that the kind of injury and
12 mechanism that would trigger a call to IAB
13 and notification to IAB?

14 A Absolutely.

15 Q Is there any indication in the
16 command log that there was a notification to
17 IAB in this case?

18 A No.

19 Q And you didn't prepare a UF49 in
20 connection with Gonzalo Cortes, right?

21 A No.

22 Q You didn't notify IAB, right?

23 A No.

24 Q When you were on the desk and
25 somebody -- withdrawn.